



## Restorative Justice as an Alternative in Resolving Severance Pay Administrative Disputes Between Employees and Companies

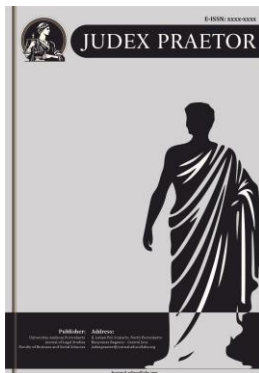
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### ARTICLE INFO

### ABSTRACT



#### History :

Submit on 17 September 2025

Review on 1 October 2025

Accepted on 9 October 2025

#### Keyword :

Justice for Employees,  
Administrative Dispute Resolution,  
Termination of Employment,  
Restorative Justice,  
Severance Pay Rights

This study focuses on justice for workers, which includes equal, fair, and non-discriminatory treatment, where their rights are fulfilled in accordance with applicable regulations or laws. In addition, this study also highlights the importance of creating a conducive, safe, and comfortable work environment and providing career development opportunities for employees as supporters of the institution. Equally important is protection from arbitrary termination of employment by superiors, which can result in administrative losses for employees. The main focus of this study is two important things, namely the resolution of administrative disputes experienced by employees due to termination of employment, and the application of restorative justice in resolving disputes related to severance pay between employees and companies. Using a solution-oriented approach based on fairness, this study aims to provide insight into how both parties can reach a fair agreement, reduce tension in working relationships, and encourage the creation of a more harmonious work environment.

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## INTRODUCTION

Indonesia, as a country governed by law, is governed by laws and regulations that protect its citizens and guarantee social security and welfare, including legal protection for workers. The highest law is the 1945 Constitution which guarantees the basic rights and status of citizens as stated in Article 27, which in essence means that everyone has the same status in the eyes of the law, including the right to work. Therefore, the source of the embodiment of the law is Pancasila, which is the fundamental basis for all aspects of existing legislation and the highest source at the normative level, namely in the formation of laws, which is strengthened by MPR Decree No. III of 2000 regulates the hierarchy from highest to lowest. Thus, all regulations under Pancasila must be in line with Pancasila values. Pancasila is essentially the fundamental philosophical values that serve as the rules and basis for the norms that apply in Indonesia.<sup>1</sup>

Value is something abstract so that in this way the values contained in Pancasila are the principles themselves such as Divinity, humanity, unity, and social justice as a reference for the philosophy of life of the Indonesian nation, which in fact every regulation is based on the values of Pancasila, including regulations relating to employment or matters related to the world of work which are under the legal umbrella and the consequences that arise in the future, the resolution of which will be in the future, for example, if a dispute or conflict occurs, it is possible that there will be parties who feel disadvantaged, so that sometimes they take legal or deliberation routes to find a way out or solution.<sup>2</sup>

In the world of work, disputes often occur due to many factors, including differences in background and way of thinking about something, resulting in poor communication, disharmonious or unhealthy competition, and inadequate leadership, which then leads to unavoidable conflicts between superiors and subordinates, leading to termination of employment. This employment relationship occurs because of a contract that has been mutually agreed upon to work together on a project or business so that the parties are bound by the contract or agreement and when a breach occurs, a dispute or conflict arises in which one of the parties is harmed by the breach. The contract refers to Article 1320 of the Civil Code, while the contract in this study is a contract that is more specific to the Employment Law.

During the contract between the Employer and the Worker, it is possible for the employment relationship to be terminated between the two, either due to the wishes of both parties or one of the parties or for legal

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<sup>1</sup> Devi Anggraini et al., "Pengamalan Nilai-Nilai Pancasila Bagi Generasi Milenial," *Jurnal Inovasi Ilmu Sosial Dan Politik (JISoP)*, Vol. 2, No. 1 (2020), p. 14.

<sup>2</sup> Luh Putu Swandewi Antari and Luh De Liska, "Implementasi Nilai-Nilai Pancasila Dalam Penguatan Karakter Bangsa," *Widyadari*, Vol. 21, No. 2 (2020), p. 681.



reasons.<sup>3</sup> Likewise, if a layoff occurs due to a commitment, the existence of this layoff is recognized by the Job Creation Law Number 11 of 2020 which before the Job Creation Law existed there was Law Number 13 of 2003 concerning Manpower Article 62 and its derivatives through Government Regulation Number 35 of 2021 Where this regulation has a condition that only reasons are justified and legally valid and if that happens then this Law guarantees workers' rights by providing compensation and other rights such as bonuses or awards during the work period so that superiors are not permitted to decide and or dismiss unilaterally which applies to institutions or companies then the latest 2025 regulations derived from the Job Creation Law include minimum wages, severance pay, and BPJS Health. Article 21 (1) of PP No. 6/2025 essentially states that workers who are laid off will receive severance pay of 60 percent of their wages for a period of 6 months.

The prolonged conflict between superiors and employees that cannot be avoided regarding this arbitrariness results in administrative losses. Abuse of authority and position, also known as abuse of power in using unilateral decisions that violate SOPs and allowing things to happen, results in administrative losses for employees, so that the company makes the decision to terminate employees by firing them without providing severance pay as a form of compensation. The losses that occur include financial losses that harm the employee's economy and hinder accountability. Accountability is one of the important issues in scientific studies and public administration practices. If left unchecked, this will disrupt services, particularly public services.<sup>4</sup>

The goal of public services is to provide satisfaction and services that meet the needs of the community, or services in general. Public services are crucial because access to services is the key.<sup>5</sup> This public service is crucial because access to services is the basic foundation for obtaining accountable information and its credibility will decrease if conflict or tension occurs. Tension between superiors and employees has a negative impact on employee psychology, such as depression due to layoffs. At the next level, mediation is needed to bring both parties together to restore the relationship between superiors and employees in the severance pay conflict resolution process so that restorative justice can be achieved as a path to justice and to heal the victim's trauma or discomfort, which is feared will lead to revenge in the future.

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<sup>3</sup> Chamdani Chamdani et al., "Perlindungan Hukum Terhadap Pekerja/Buruh Yang Putus Hubungan Kerja Sebelum Masa Kontrak Kerja Berakhir," *Jurnal Kepastian Hukum Dan Keadilan*, Vol. 4, No. 1 (2022), p. 6.

<sup>4</sup> Kristian Widya Wicaksono, "Akuntabilitas Organisasi Sektor Publik," *JKAP (Jurnal Kebijakan Dan Administrasi Publik)*, Vol. 19, No. 1 (2015), p. 21.

<sup>5</sup> Muhammad Fitri Rahmadana and Dkk., *Pelayanan Publik*, Ed. Jamer Simarmata., Medan: Yayasan Kita Menulis, (2020), p. 3.



## METHOD

This research uses a descriptive qualitative approach. Qualitative research focuses on understanding the essence of human experiences, behaviors, and perceptions, rather than on obtaining numerical data.<sup>6</sup> This research is empirical juridical research because it examines primary, secondary and tertiary library materials and this severance pay case is real in the field and is taken as a reference from previous research without going directly into the field, meaning empirical data is taken from other people's research. The primary source in this case is the law, namely the law related to severance pay or employment. Meanwhile, empirical research conducted in the field is the research of Sokhib et al. The termination of employment carried out by the company in March 2014 amounted to 15 female employees, which was motivated by differences in perception between the employer and the employees.<sup>7</sup> This research also uses a statute approach as its legal basis, thus appropriately representing empirical legal research. The researcher also uses laws as primary sources, as outlined in the discussion above, including MPR Decree No. III of 2000, Job Creation Law No. 11 of 2020, Law No. 13 of 2003, and others mentioned above. The researcher also uses dictionaries as tertiary sources to support the primary and secondary sources. Secondary legal sources include books and journal articles from previous research, while tertiary legal sources include legal dictionaries.

## RESULT & DISCUSSION

### A. Administrative Dispute Resolution for Employees Due to Termination of Employment

Administrative Dispute Resolution for Employees Due to Termination of Employment Termination of Employment, abbreviated as PHK, is a form of termination of the employment relationship between an employee and their employer through the company due to various reasons, resulting in the termination of rights and obligations, many of which are caused by factors such as efficiency, bankruptcy, etc. There are several forms of PHK: termination by the employer or entrepreneur, termination by the laborer or worker, termination of the employment

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<sup>6</sup> Mecci Nilam Sari, *Metode Penelitian Kualitatif Konsep Dan Aplikasi*, Sumedang: Mega Press Nusantara, (2024), p. 85.

<sup>7</sup> Sokhib Naim et al., "Pemutusan Hubungan Kerja Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *Justisi*, Vol. 8, No. 3 (2022), p. 164.



relationship by law, and termination by the court So in this study, the layoffs were caused by the company.<sup>8</sup>

Since layoffs are regulated by law, institutions or companies are required to comply with procedures so that if they are not complied with, they will be subject to sanctions. At least before laying off employees, there must be prior notification regarding the reasons for being laid off so that they are not immediately dismissed without any clear reason which makes employees shocked and basically must go through two-way communication through deliberation because termination of employment without going through the procedural mechanism can result in a justification being subject to legal sanctions and institutions or companies are required to re-employ the employee, but sometimes when re-employed, of course, there is an impression and feeling of discomfort in the heart, especially of course it will feel strange because they have experienced something unpleasant for employees, sometimes the employee can also resign because of discomfort so that the institution or company is required to provide compensation or large compensation. Compensation is everything received, both physical and non-physical.<sup>9</sup>

The principle of fair treatment in the world of work, it is a reflection of a comfortable and conducive work environment without differentiating between one employee and another regardless of their background so that with equal treatment it will easily increase loyalty and make the institution or company have a good reputation and boost employee synergy and dedication. There are many different ways to provide awards to employees to support a productive spirit in working, for example, by providing bonuses based on productivity, skills or dedication to the institution or company according to the performance of each employee and in addition, employees can be given promotions as a form of appreciation from superiors based on the qualifications of each employee and recognition as people who exist so that they feel there and important in the institution or company so that it can be said to be fair. Justice can only be understood if it is positioned as a condition that is intended to be realized by law.<sup>10</sup>

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<sup>8</sup> Khairani, *Pengantar Hukum Perburuhan Dan Ketenagakerjaan: Disesuaikan Dengan Undang-Undang No. 11 Tahun 2021 Tentang Cipta Kerja/Omnibus Law*, Depok: PT Raja Grafindo Persada, (2023), p. 184.

<sup>9</sup> Djoko Setyo Widodo and Andri Yandi, "Model Kinerja Karyawan: Kompetensi, Kompensasi Dan Motivasi (Literature Review MSDM)," *Jurnal Ilmu Multidisplin*, Vol. 1, No. 1 (2022), p. 4.

<sup>10</sup> Ana Suheri, "Wujud Keadilan Dalam Masyarakat Di Tinjau Dari Perspektif Hukum Nasional," *MORALITY: Jurnal Ilmu Hukum*, Vol. 4, No. 1 (2018), p. 61.





There are many types of justice, including retributive justice, which is justice based on resources, namely based on needs. If it is related to employees in an institution or company in the form of salary, it is adjusted to their contribution to the institution or company. Second is justice that is equitable or appropriate, which is called retributive justice, for example, employees who skip work are punished according to the rules. Third is procedural justice, which is justice that is equal in nature, for example, all employees participate in programs held by the institution or company. Fifth is commutative justice, which is justice based on reciprocal relationships due to a contract, for example, if an employee is sick and hospitalized, the institution provides health insurance by paying the hospital costs. Sixth is legal justice, which is based on existing or applicable laws, in this case, for example, an employee who makes a mistake is punished according to the established regulations. The sixth is social justice, which is justice based on equality without discrimination, namely fair treatment, for example, all employees receive or the company provides dormitory facilities intended for employees. The seventh is restorative justice, which is justice based on repairing existing losses or those caused by the company to restore losses and improve relations between victims and perpetrators or the community.

The influence of equality is the key to justice as the main foundation, which in one concrete example has an impact on salary justice for employees with no term of discrimination, meaning that the salary received is in accordance with the results of their work, especially if they no longer work, they will be given severance pay by the company or institution where they work. Every individual has the right to the same basic freedoms such as freedom of speech, religion and movement, these freedoms are top priorities and should not be sacrificed for other social and economic benefits.<sup>11</sup>

Therefore, employees need to express their opinions regarding severance pay that is not provided. Severance pay is a right granted by a company or institution as financial compensation resulting from the layoff or can be used as a financial reserve until the employee finds new employment.<sup>12</sup>

Compensation is one type of compensation given to workers/laborers due to termination of employment Compensation

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<sup>11</sup> John Rawls, *A Theory of Justice*, Cambridge: Harvard University Press, (1971), p, 60-65.

<sup>12</sup> Mutiah, "Analisis Yuridis Pemberian Pesangon Bagi Pekerja/Buruh dalam Hal Pemutusan Hubungan Kerja (PHK) Berdasarkan Peraturan Pemerintah Nomor 35 Tahun 2021 Tentang Perjanjian Kerja Waktu Tertentu, Alih Daya, Waktu Kerja dan Waktu Istirahat dan Waktu Pemutusan Hubungan Kerja", Universitas Mataram, (2023), p. xiii.



can provide a sense of appreciation for performance and contribution, or increase personal pride, leading to loyalty and productivity, plus a comprehensive package that reduces employee turnover. Disputes that are annulled are caused by several factors, including those that harm certain parties, in this case employees. A superior, as an official, has authority but misuses that authority, resulting in the official deviating from their intended goals without carefully considering the employee's well-being. This can be considered a violation of SOPs and an administrative violation. Violating SOPs has quite severe consequences, meaning it has significant legal repercussions. Besides damaging a company's reputation, it can also harm the company's finances. Distrust among others can be a trigger for a company to go bankrupt. Although the extent of this depends on the specific circumstances, it is sufficient reason for prospective employees to think twice about applying for a job.

More significantly, the impact of this bad reputation certainly leads to difficulties in recruiting new employees, reducing the bargaining value of competitiveness, coupled with the existence of social media that spreads news faster without waiting for a matter of days, so it is possible to hamper all sectors or programs in the institution or company and in the worse end, the institution or company will close, that is why it is necessary to maintain the integrity of the company, especially in terms of severance pay so that public trust is maintained.

To resolve administrative disputes is through this path, namely the PHK procedure where this procedure states that this procedure is regulated in the 2003 Law on employment, the procedure for termination of employment by employers. The procedure for termination of employment by employers is as follows: giving a warning letter and guidance, deliberation with the workers' union, requesting permission to the industrial relations dispute resolution agency. From this, it can be understood that the company is not allowed to take action without going through the existing procedures so that it can be said to be an arbitrary action. Arbitrary actions by superiors to subordinates are a form of disrespectful nature and behavior and are unlawful actions that are contrary to humanity and minimal tolerance. Sequentially, efforts to obtain severance pay through many ways, including through negotiations or deliberations to reach a mutual agreement submitted to HRD or superiors within a predetermined deadline, in this case in the form of a bipartite path. The second way is through a submission to the local Manpower Office or employment agency by attaching evidence that can be used as a strong reason, which is then known as tripartite. If the tripartite does not find a solution, then it can be taken by filing a lawsuit to the Industrial Relations Court (PHI) to obtain a legal decision and



there needs to be evidence as in the tripartite, namely evidence to strengthen the reasons for filing a lawsuit to the PHI.

## **B. Restorative Justice in the Settlement of Severance Pay Disputes Between Employees and Companies**

Looking at this restorative justice which is a form of embodiment of the form of case resolution through mediation, it needs to be done because in addition to being able to restore employee trauma due to arbitrary superiors so that a middle ground can be found in this case the suitability of rights and obligations as employees is fulfilled in addition to being able to establish a relationship that was once tense to be good again. The work process of this restorative justice is almost the same as deliberation to obtain a consensus, namely applying the principles of dialogue where in the application of restorative justice in this administration it is regulated in prosecutor's regulation No. 15 of 2020 which basically demands to stop prosecution based on restorative justice, state police regulation No. 8/2021 regarding the handling of criminal acts in the investigation process then in relation to victims it is regulated in the Law on the protection of witnesses and victims No. 31 of 2014 where in this regulation provides rules regarding the rights of victims in the process of recovering losses and assistance to victims so that employees who do not receive severance pay are arbitrary actions from superiors who need to be protected and help employees get their rights by means of presenting both parties.

The way to present both parties is before a mediator so that employees and superiors get facilities in resolving the severance pay administrative dispute. This goal, namely with restorative justice, is essentially to restore the relationship between superiors and subordinates and encourage superiors to be responsible for providing severance pay or compensation as from the results of their performance it is clear here that by not providing severance pay to employees there is an element of active action that is detrimental by intentionally doing it consciously which then becomes the fault of the superior so it is natural for employees to take action in the form of a lawsuit to the court because of the dispute over rights. Rights disputes in this case are disputes resulting from the non-fulfillment or non-fulfillment of the rights and obligations that should be received by employees in the company. This dispute arises due to underlying factors such as misunderstandings resulting in differences in interpretation in implementing existing procedures where this dispute is based on Law Number 2 of 2004 concerning the settlement of industrial relations Therefore, it is hoped that it will be resolved properly and without causing any resulting losses.





This restorative approach is a particularly effective solution for addressing the losses resulting from layoffs, which impact severance pay. Competition among advisors or mediators is a key measure of success in mediation for both parties, and it is essential to avoid court proceedings. Therefore, mediators must possess integrity, honesty, confidentiality, and neutrality to ensure a balanced final conclusion. Furthermore, mediators must encourage both parties to think critically and participate in finding solutions to ensure that severance pay is still paid in the event of a layoff. Because integrity as a mediator is important, the mediator needs to fulfill the legal and legally recognized requirements and provisions such as obtaining a valid certificate as a mediator is the key to ensuring that his existence is legal and can be ensured to have adequate capabilities.

There are requirements to become a mediator, namely as included in article 3 (1) of the decree of the Minister of Manpower and Transmigration no. Kep 92/Men/VI/2004, namely that the mediator in general is a civil servant, faithful and pious, Indonesian citizen, healthy, mastering laws and regulations, having authority, honesty, justice and good behavior, having at least a bachelor's degree and having legitimacy from the Minister of Manpower and Transmigration.<sup>13</sup> Thus, restorative justice can be defined as an approach within the criminal context, encompassing both the perpetrator and the victim, in this case the employee and the company, to achieve a just solution. The primary goal is to heal the trauma experienced by employees resulting from layoffs and lack of severance pay. Beyond the aforementioned, an equally important aspect is the need to acknowledge and acknowledge mistakes. A restorative justice approach can only be implemented if the perpetrator acknowledges and acknowledges their mistakes. The restorative process is expected to foster a deeper understanding of their mistakes and their impact on the victim and society.<sup>14</sup> From this, it can be understood that it is important to be aware of the mistakes made so that feelings of guilt and regret do not arise in the future.

## CONCLUTIONS

The resolution of administrative disputes related to termination of employment must comply with applicable legal procedures to avoid legal

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<sup>13</sup> M. Thaib and Ramon Nofrial, *Penyelesaian Perselisihan Hubungan Industrial*, Sleman: Deepublish, (2012), p. 99.

<sup>14</sup> Ainul Azizah, I Gede Widhianan Suarda, and Mardiyono Mardiyono, "Prinsip Keadilan Restoratif Dalam Penghentian Penuntutan Perkara Pidana Berdasarkan Peraturan Jaksa Agung Nomor 15 Tahun 2020," *Jurnal Hukum, Politik Dan Ilmu Sosial*, Vol. 2, No. 2 (2023), p. 154.



sanctions and ensure that employee rights, including severance pay, are fulfilled fairly. This process includes clear notification prior to termination, two-way communication through consultation, and the application of the principle of fair treatment in the workplace. The provision of compensation or severance pay is an employee right that must be respected, as it can improve relations between employees and the company and maintain the company's reputation and integrity in the long term.

Restorative justice in the settlement of severance disputes between employees and companies focuses on restoring relations between the two parties through mediation based on dialogue and acknowledgment of wrongdoing by the guilty party. This approach is effective in addressing employee trauma resulting from unfair termination of employment, as well as helping to ensure that severance pay is paid in accordance with employee rights. Mediators with integrity and neutrality play an important role in this process, which ultimately not only resolves disputes, but also repairs relationships and prevents similar problems in the future.

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